

Notice of Allowability

Application No.

10/034,004

Examiner

Callie E. Shosho

Applicant(s)

MODI ET AL.

Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 7/2/04 and telephonic interview conducted 9/23/04.
2. ☒ The allowed claim(s) is/are 1-34 and 36.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 9/23/04.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

Examiner's Amendment

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

(1) Cancel claim 35.

2. Authorization for this examiner's amendment was given in a telephone interview with Theresa O' Rourke on 9/23/04.

Statement of Reasons for Allowance

3. The present claims are allowable over the “closest” prior art Stone et al. (U.S. 6,645,282) and Johnson (U.S. 4,280,939) for the following reasons:

(a) Stone et al. disclose flexographic hot melt ink comprising wax such as linear polyethylene wax, pigment, hydrocarbon resin, hyperdispersant, and plasticizer such as dicyclohexyl phthalate. It is further disclosed that the ink is suitable for use in flexographic printing and that the ink is prepared in two steps. There is also disclosed method for making the ink.

However, as set forth in amended 35 USC 103(c), subject matter which qualifies as prior art under one or more subsections (e), (f), and (g) of section 102 cannot be applied against the claimed invention if the prior art and the claimed invention “were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.” This rule change to 103(c) applies to any patent application filed on or after November 29, 1999. See Official Gazette, April 11, 2000. As noted in the Official Gazette, the “mere filing of a continuation application on or after November 29, 1999 will serve to exclude commonly owned 102(e) prior art that was applied, or could have been applied, in a rejection under 103 in the parent application.”

Given that the filing date of the present application is subsequent to November 29, 1999, that Stone et al. qualifies as prior art under 102(e), and that applicants have established that the present invention and Stone et al. were, at the time that the present invention was made, commonly owned, Stone et al. is disqualified as prior art against the present claims.

(b) Johnson discloses flexographic hot melt ink comprising pigment, ethylene vinyl acetate copolymer which has melt index of 20-400 g/10 min, wax and/or plasticizer, hydrocarbon resin, dispersant, and stearyl alcohol which is a solid linear alcohol. The wax includes animal wax and polyethylene wax. There is also disclosed a method of flexographic printing comprising providing the above ink, heating the ink to 82-149 °C, and then printing.

However, the viscosity of the ink of Johnson is outside the scope of the viscosity required in all the present claims. Specifically, Johnson discloses that the ink possesses high melt viscosity of about 50-1000 poises (col.4, lines 37-39) and that at 100 °C, the ink possesses viscosity of 100-1000 poises (col.5, lines 18-21), which is in direct contrast to the present claims which all require that when heated to a temperature between 90 °C and 135 °C, the ink possess viscosity of between about 100 cps and about 1200 cps or between about 1 and about 12 poises.

Thus, it is clear that that Johnson does not disclose or suggest the present invention.

Further, the 35 USC 112, 2nd paragraph rejection of record is overcome by the examiner's amendment as set forth in paragraph 1 above (see attached Interview Summary).

In light of the above, it is clear that the rejections of record are untenable and so, the present claims are passed to issue.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

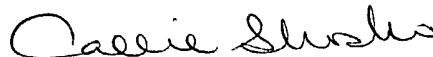
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fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Callie E. Shosho whose telephone number is 571-272-1123. The examiner can normally be reached on Monday-Friday (6:30-4:00) Alternate Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Callie E. Shosho
Primary Examiner
Art Unit 1714

CS
9/24/04